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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte PHILIP LEE CHILDS, MICHAEL T. VANOVER,
STEVEN R. WELCH, TED BONKENBURG, and DEJAN DIKLIC

———————

Appeal 2008-1000
Application 10/618,213
Technology Center 2100

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Decided: September 8, 2008

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Before JAMES D. THOMAS, JAY P. LUCAS,
And THU A. DANG, *Administrative Patent Judges.*

THOMAS, *Administrative Patent Judge.*

DECISION ON APPEAL

This is appeal under 35 U.S.C. § 134(a) from the Examiner's

rejections of claims 1 through 7 on appeal. We have jurisdiction under

35 U.S.C. § 6(b).

As best representative of the disclosed and claimed invention, independent claim 1 is reproduced below:

1. A backup system for a computer having a hard drive comprising:

a program appliance comprising a program attachable in data communication with the computer; and

a data storage appliance attachable in data communication with the computer,

wherein the program is configured to copy the files from the hard drive to the data storage appliance without installation of the program on the hard drive.

The following reference is relied on by the Examiner:

Symantec corporation, "Norton Ghost User's Guide," (1998-2001), p. 1-124.

Claims 1 through 7 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Symantec.

Rather than repeat the positions of the Appellants and the Examiner, reference is made to the Brief and Reply Brief for Appellants' positions, and to the Answer for the Examiner's positions.

OPINION

For the reasons set forth by the Examiner in the Answer, we sustain the rejection of claims 1 through 7 under 35 U.S.C. § 102. Although Appellants present arguments in the principal Brief as to each claim on appeal, the subject matter of dependent claim 3 is repeated in dependent claim 7, and the subject matter of dependent claim 4 is repeated in

dependent claim 6. Therefore, claim 3 is representative of the subject matter of claim 7, and claim 4 is representative of the subject matter in claim 6. In addition to the Examiner's reasoning in the Answer, we add the following.

At the outset, we note that the negative limitation of independent claim 1 of "without installation of the program on the hard drive" is positively recited in another form as the limitation in dependent claim 3 of automatic execution of the program appliance after being attached to the computer. These features relate to admitted prior art features known in the art in accordance with the discussion in paragraph [0022-0023] at pages 8 and 9 of the Specification as filed. The so-called plug-and-play capabilities of the exemplary prior art operating system of Windows XP was relied upon for these claimed features as well as the automatic execution capability with new media placed within a computer operating on such an operating system. Significantly, an exemplary USB drive inserted within the Windows XP operating system may have commands on it including an AUTORUN.INF file, which permits automatic execution. The Symantec reference is clearly compatible with such admitted prior art features because it specifically make mention of Windows XP operation systems at least at pages 9 and 13 of this reference.

Appellants' argument that Symantec does not teach a program appliance is misplaced because we agree with the Examiner's interpretation of the teachings of Symantec including the creation of so-called boot disks to comprise the claimed program appliance as well as the ability to write

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cloned data onto removable means, attachable media to a computer, from the computer's hard drive. The ability to clone such data files is discussed beginning at page 9.

The Ghost Boot Wizard discussion beginning at page 11 is utilized by the artisan to create the noted boot disks which start the copying functionality in the manner claimed. There is no disputing this among the arguments of Appellants and the Examiner. This page as well as the discussion at page 26 indicate that the user starts the functionality of the copying ability of the reference by starting the computer using the boot disks or otherwise turning it on. Page 11 also indicates that the capability provided by "the Ghost executable" is that it is run easily from a boot disk or a hard drive.

Not only is the Examiner's view that the boot disk comprises the claimed program appliance appropriate, the ability of Symantec to operate in a network environment is discussed at pages 10, 18, 19, 42, 99, and 100. This permits the ability of the programs embodying the capability for automatic operation to exist on another computer in a network to the extent recited in dependent claim 5, and to thereby copy onto another so-called data storage appliance data from a computer. The Examiner's assessment of the master-slave computers relationship among these pages is consistent with what the artisan would understand to be a server in addition to operating environments including TCP/IP. Moreover, the network environment within Symantec permits a remote computer and its stores to comprise the claimed program appliance, which provides remote program control to copy files

from another remote computer's hard drive to an identifiable Read/Write store attached to the computer once the initial remote computer is connected to the other remote computer and to do so without installation of the program upon the hard drive of the second remote computer.

In any context, a type of memory mentioned at page 10 of Symantec permits the same media to be used for both functions of storing program data and data itself as in claim 2. The recovering and restoring operations, such as those briefly mentioned at page 10 of Symantec, permit the reading of data from the data storage element containing the cloned data from the hard drive back to the hard drive as in representative dependent claim 4. This functionality as well appears to be performable by a remote computer in the network setting environments noted earlier.

Appellants' Reply Brief seems to focus upon an invitation for us to read the disclosed invention into the claimed invention for features that are not recited in the claims. The position at page 6 of the Reply Brief, for example, that Symantec does not disclose that the program is further configured to execute automatically and immediately upon the program appliance being attached to the computer is misplaced since the immediacy is not a recited feature of the claims on appeal. Moreover, this feature relates to a feature known in the art as we noted earlier in this opinion and otherwise taught in Symantec.

In view of the foregoing, the decision of the Examiner rejecting claims 1 through 7 under 35 U.S.C. § 102 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. §1.136(a). See 37 C.F.R. § 1.136(a)(1)(iv).

<div align="center">AFFIRMED</div>

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